

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

AGL RESOURCES INC., NICOR INC., and)
NORTHERN ILLINOIS GAS COMPANY)
d/b/a NICOR GAS COMPANY)
) Docket No. 11-0046
Application for Approval of a Reorganization)
pursuant to Section 7-204 of the Illinois Public)
Utilities Act)

Rebuttal Testimony of

HENRY P. LINGINFELTER

Executive Vice President, Utility Operations
AGL Resources Inc.

On behalf of Joint Applicants

May 26, 2011

1 **I. INTRODUCTION**

2 **Q. Please state your name and business address.**

3 A. Henry (Hank) P. Linginfelter, 10 Peachtree Place, Atlanta, Georgia 30309.

4 **Q. Have you previously testified in this docket?**

5 A. Yes. I submitted direct testimony in this proceeding.

6 **II. PURPOSE OF TESTIMONY, SUMMARY OF CONCLUSIONS & WITNESS**
7 **IDENTIFICATION**

8 **Q. What is the purpose of your rebuttal testimony?**

9 A. My rebuttal testimony provides an overview of the Joint Applicants' response to all of the
10 issues raised by parties that filed direct testimony on April 28, 2011, and specifically
11 responds to many of those issues. This includes the direct testimony filed on behalf of
12 the Illinois Commerce Commission ("Commission") Staff ("Staff"), the Office of the
13 Illinois Attorney General ("AG") and the Citizens Utility Board ("CUB") (collectively
14 "AG/CUB"), as well as the settlement reached between the Joint Applicants and the
15 Retail Energy Supply Association ("RESA") and Interstate Gas Supply ("IGS")
16 (collectively "IGS/RESA") subsequent to the filing of direct testimony (*see* Settlement
17 Agreement attached to Stipulation, collectively admitted into the record as Nicor Gas
18 Ex. 8.0). I will address certain issues in detail, and will introduce the Joint Applicants'
19 rebuttal witnesses, who respond in detail to the remaining issues.

20 **Q. Would you summarize your rebuttal testimony?**

21 A. The Joint Applicants' direct and rebuttal testimony provide the Commission with a
22 detailed record concerning the proposed transaction ("Reorganization") between AGL

23 Resources Inc. (“AGL Resources”) and Nicor Inc., and its impact on Northern Illinois
24 Gas Company d/b/a Nicor Gas Company (“Nicor Gas”) and its customers. That evidence
25 demonstrates that the Reorganization is in the public interest and meets the requirements
26 of the Public Utilities Act (“Act”).

27 I am encouraged that the differences between the Joint Applicants and Staff on
28 many of the requirements under Sections 7-204(b)(1)-(7) and 7-204(c)(i) and (ii) of the
29 Act are limited in most instances. In addition, I appreciate the prescriptive resolution
30 provided by Staff that would allow them to recommend that the various statutory findings
31 have been met. Our rebuttal testimony accepts most, but not all, of the Staff
32 recommendations. With regard to those recommendations we did not accept, we have
33 offered alternative solutions. To be sure, it is our intent to address Staff’s concerns, while
34 recognizing that the proposed transaction will combine two companies that are
35 recognized as industry leaders in the provision of safe, reliable and cost-effective natural
36 gas distribution services. Our rebuttal testimony also reaffirms our commitment: (1) to
37 maintain, for a period of three years after closing, the number of full time equivalent
38 employees involved in the operation of Nicor Gas’ gas distribution business; (2) to honor
39 existing union contracts; (3) to maintain the level of community and charitable giving
40 that Nicor Gas has been providing to the communities it serves in Illinois; and (4) to
41 establish AGL Resources’ newly expanded Distribution Operations headquarters in
42 Illinois following the close of the merger.

43 We do strongly disagree with the claims of AG/CUB that assume unsubstantiated
44 cost savings and propose unwarranted rate adjustments. Because of our continuing
45 commitments to Nicor Gas customers, the transaction will not result in any immediate net

46 savings. Moreover, Nicor Gas will continue to incur administrative and overhead
47 expenses, regardless of who its parent company may be. It is well known that Nicor Gas
48 already is the low-cost provider of natural gas distribution services in Illinois. There has
49 been no showing that the transaction will result in immediate net savings and, notably,
50 Staff also does not point to any such savings. AG/CUB's claims should be rejected.

51 **Q. In addition to your rebuttal testimony, please identify the other Joint Applicant**
52 **witnesses submitting rebuttal testimony.**

53 A. The witnesses submitting rebuttal testimony on behalf of the Joint Applicants are:

- 54 • Stephen Cave – AGL Resources' Vice President of Finance and Treasurer. Mr. Cave
55 responds to the direct testimony of Staff witness Rochelle Phipps related to the
56 evaluation of certain financial implications of the proposed Reorganization. (Joint
57 Applicants Exhibit 9.0).
- 58 • Elizabeth Reese – AGL Resources' Vice President of Operational Planning and
59 Analysis. Ms. Reese responds to the direct testimony of Staff witness Dianna
60 Hathhorn concerning her suggested amendments to the Proposed Services Agreement
61 and the Operating Agreement, and requirements related to the Tax Allocation
62 Agreement and the push down accounting entries. (Joint Applicants Ex. 10.0).
- 63 • Gerald O'Connor – Nicor Gas' Senior Vice President Finance and Strategic Planning.
64 Mr. O'Connor responds to the direct testimony of Staff witness David Rearden
65 relating to Section 7-204(b)(6) and AG/CUB witness David Efron relating to (1) the
66 current and future earnings of Nicor Gas and projected post-Reorganization earnings,
67 and (2) the Operating Agreement phase of this proceeding. (Joint Applicants Exhibit
68 11.0).
- 69 • Richard Lonn – AGL Resources' Director of Regulatory Compliance. Mr. Lonn
70 responds to certain testimony of Staff witness Darin Burk relating to AGL Resources'
71 commitment to safety. Specifically, Mr. Lonn describes the operations and safety of
72 the regulated gas utilities currently operating under the AGL Resources mantle.
73 (Joint Applicants Exhibit 12.0).

74 **III. ITEMIZED ATTACHMENTS**

75 **Q. Are there any exhibits to your testimony?**

76 A. Yes. The following exhibits are attached to my rebuttal testimony:

77 • Joint Applicants’ response to Staff Data Request RWB 3.08 is attached as Joint
78 Applicants Exhibit 8.1; and

79 • Joint Applicants’ response to Staff Data Request DLH 4.01 is attached as Joint
80 Applicants Exhibit 8.2.

81 **IV. SUMMARY OF JOINT APPLICANTS’ RESPONSE TO MEETING**
82 **SECTION 7-204 REQUIREMENTS**

83 **Q. Various Staff and Intervenor witnesses present testimony as to whether the**
84 **proposed Reorganization meets the requirements of Section 7-204 of the Act. What**
85 **is your general response?**

86 A. The Joint Applicants’ initial evidentiary presentation provided the Commission with
87 evidence that the proposed Reorganization meets the requirements of the Act. Our
88 rebuttal addresses those questions that have been posed since then. Together, they
89 provide substantial and compelling evidence demonstrating that the Reorganization
90 should be approved.

91 To facilitate our response to Staff and Intervenor direct testimony, I will briefly
92 summarize the Joint Applicants’ response to each applicable statutory provision in the
93 following questions and answers. In these answers, I also note the Joint Applicants’
94 witness(es) responsible for providing our detailed response.

95 **Q. Section 7-204(b)(1) requires the Commission to find that the proposed**
96 **Reorganization will not diminish the utility’s ability to provide adequate, reliable,**
97 **efficient, safe and least-cost public utility service. Staff witness Maple claims that**
98 **the Joint Applicants have not presented evidence showing that the Reorganization**
99 **meets this requirement. (Maple Dir., Staff Ex. 11.0R, 3:49-58). Has such evidence**
100 **been presented?**

101 A. Yes. The Joint Applicants have shown that the Reorganization will not diminish Nicor
102 Gas' ability to provide adequate, reliable, efficient, safe and least-cost public utility
103 service. While Mr. Maple claims that his assessment of the materials AGL Resources
104 reviewed, and of the current plans for post-Reorganization operations, are insufficient to
105 permit the Commission to find that Section 7-204(b)(1) has been satisfied (*Id.* at 3:42-58,
106 13:238-58), I strongly, but respectfully, disagree.

107 **Q. How have the Joint Applicants demonstrated that the provisions of**
108 **Section 7-204(b)(1) have been satisfied?**

109 A. The Joint Applicants have met that burden by showing how the Reorganization will
110 affect Nicor Gas *going forward*.

111 In my opinion, this starts with an assessment of the acquirer. AGL Resources is a
112 public utility holding company with more than 150 years' history of operating safe and
113 reliable natural gas systems in the United States. Put simply, operating natural gas
114 distribution systems is what we do. Related to that, one need only look at previous
115 integrations to which AGL Resources has been a party. Six years ago, AGL Resources
116 acquired the NUI Corporation and with it the regulated natural gas distribution operations
117 in New Jersey, Florida and Maryland. Since that time, AGL Resources has focused on
118 maintaining or improving the safety, reliability and efficiency of those systems. In
119 addition, AGL Resources purchased Virginia Natural Gas in 2000 and Chattanooga Gas
120 Company in 1988 and completely integrated these two utilities within the AGL
121 Resources family of operating companies.

122 Next, the Commission should also heavily weight the commitment AGL
123 Resources has made related to the staffing of Nicor Gas operations subsequent to

124 completing the Reorganization. People are at the heart of what makes a strong utility.
125 Nicor Gas' system will continue to be operated by local, knowledgeable people following
126 the Reorganization. Nicor Gas has a history of providing safe and reliable service to its
127 customers, and it is our goal to maintain this commitment to the provision of safe and
128 reliable service to customers subsequent to closing the proposed transaction.

129 Finally, as to operational efficiency, Nicor Gas is the low-cost provider of gas
130 distribution service in Illinois today. (D'Alessandro Dir., Joint Applicants Ex. 2.0, 5:73-
131 6:86). Staff did not contest this fact in its direct testimony. That model matches the cost
132 management philosophy of AGL Resources. Nothing that we plan will impair Nicor
133 Gas' ability to keep that distinction.

134 **Q. How do you respond to Staff witness Maple's claims concerning the integration**
135 **planning process? (Maple Dir., Staff Ex. 11.0R, 10:191-13:258).**

136 A. I believe that Mr. Maple's claims about our integration planning process miss the point.
137 The integration process in this case is not a simple study prepared by AGL Resources and
138 set on a shelf waiting for the deal to close to implement. The Joint Applicants provided a
139 detailed map of the integration process in the response to Staff Data Request RWB 3.08,
140 which is attached hereto as Joint Applicants Exhibit 8.1. This process was carefully
141 organized and includes appropriate representatives from both companies. The first step
142 in that process is for both companies to fully understand each other's current processes,
143 structure and practices. Completing that step will enable the companies to develop a
144 combined organization positioned to implement best practices for our customers. The
145 question is not whether customers will be served, but how best to serve them. At the
146 outset, the Joint Applicants committed that no decision will be made that will impair the

147 ability of Nicor Gas to meet its obligations to its customers. So I am confident the
148 integration process will yield an organization and processes that will serve our customers
149 well following the Reorganization. Respectfully, Mr. Maple's testimony misses the big
150 picture on why the Commission should find the conditions of Section 7-204(b)(1) have
151 been satisfied.

152 **Q. Have the Joint Applicants omitted any information that Mr. Maple should have**
153 **received or that is necessary to reach a conclusion about the future of Nicor Gas?**

154 A. No. I have been involved in the process of evaluating whether to acquire a utility on a
155 variety of occasions throughout my career with AGL Resources. Examining reams of
156 schedules, reports and engineering schematics *before* you make an offer (the "due
157 diligence" referenced by Mr. Maple) is not the only means by which an acquirer
158 determines the quality of a system and is certainly not indicative of how it will be
159 operated following Reorganization.

160 Especially in recent times, with the advent of strong public securities regulation
161 and investors' demands for detailed information, the information an acquirer like AGL
162 Resources relies on to make an acquisition is largely in the public domain. Mr. Maple
163 fails to consider this plethora of public information. For example, given the information
164 that is publicly available resulting from Nicor Inc. and Nicor Gas' reporting requirements
165 as a public utility and as an Security and Exchange Commission ("SEC") registrant, as
166 well as Nicor Gas' reputation in Illinois and nationally, we knew this was a utility with an
167 excellent reputation for providing safe and reliable service in a cost-effective manner.
168 We also relied heavily on the knowledge that the Commission has an active program of
169 reviewing and monitoring its utilities and we trust that their review is thorough and

170 ongoing. Consequently, Mr. Maple is simply incorrect when he supposes that there are
171 significant quantities of private and confidential data on the adequacy, safety, and
172 reliability of Nicor Gas' system that were unknown prior to the due diligence process.

173 Taken together, these publicly available facts, along with the information
174 provided and the review undertaken, were sufficient for AGL Resources' management to
175 conclude that the merger would result in a strong Nicor Gas dedicated to continuing to
176 meet the needs of its customers in a safe, reliable and cost efficient manner.

177 I cannot put it more clearly than this—no relevant due diligence materials were
178 withheld and no required information was or is missing.

179 **Q. Did AGL Resources undertake the due diligence necessary for management to make**
180 **an informed decision regarding the proposed Reorganization?**

181 A. Yes. Mr. Maple's claim that the due diligence process was deficient has no basis in fact.
182 (Maple Dir., Staff Ex. 11.0R, 7:136-9:169). The facts demonstrate that AGL Resources'
183 Board of Directors and management thoroughly considered the issues when determining
184 to invest \$3.1 billion in Nicor Inc. and its subsidiary companies. AGL Resources did not
185 have to prepare due diligence reports to know about Nicor Gas' operations. Being in the
186 same industry, AGL Resources already had a great deal of information about Nicor Gas
187 and its operations through industry analyses prepared by entities such as the American
188 Gas Association ("AGA"), where both AGL Resources and Nicor Gas are members.
189 Indeed, we were very familiar with Nicor Gas well prior to entering into the proposed
190 transaction through our interactions at the AGA. Further, as noted above, our
191 management team also had substantial publicly available information about Nicor Gas.
192 Any claim that AGL Resources did not conduct a thorough analysis of the proposed

193 transaction is without merit. I assure the Commission that I and the AGL Resources
194 Senior Management team had all the facts necessary to make an informed decision in
195 recommending to the Board of Directors that it authorize this \$3.1 billion investment.

196 **Q. Mr. Maple claims that “[m]ost of the important details about any company are**
197 **confidential by nature and do not exist in public documents.” (Maple Dir., Staff**
198 **Ex. 11.0R, 8:145-47). In your experience, is it the case that utilities do not make the**
199 **most important details of its business public?**

200 A. No. The SEC requires that publicly traded companies report extensive information about
201 conditions, events or requirements of the business that would be material to the average
202 investor. Those requirements were further bolstered by the enactment of the federal
203 Sarbanes-Oxley legislation, which imposed far more strict disclosure requirements on
204 corporations and their senior management. As a named officer of a publicly traded
205 company, I can attest to the seriousness of those requirements and the fact that I am
206 responsible for ensuring that my investors have a full and complete picture of the nature
207 of our business and the risk and obligations we face. All public companies, including
208 Nicor Inc., have the same requirements regarding public disclosure. The need for
209 transparency of public utilities’ record-keeping and operations is even greater given the
210 nature of regulation and oversight by the various regulatory agencies at the state and
211 federal level. For example, one need only look to the United States Department of
212 Transportation records to understand the nature of a gas distribution system, such as
213 Nicor Gas, and the issues facing that system. In short, the notion that all the “important”
214 information about a public company is kept confidential from the public is completely

215 contrary to the requirements set forth under the state, federal and securities rules and
216 regulations.

217 **Q. How do you address Mr. Maple's concern that detailed operational integration**
218 **plans are not yet complete? (Maple Dir., Staff Ex. 11.0R, 13:238-55).**

219 A. AGL Resources' commitment and ability to maintain Nicor Gas' high levels of safety
220 and operational performance does not hinge on the details of these types of plans. AGL
221 Resources has the demonstrated wherewithal to accomplish those tasks and our
222 commitment cannot be called into question. Moreover, Mr. Maple's concern seems to be
223 grounded in a misunderstanding concerning when detailed integration plans are
224 completed. Especially when acquiring a utility with a strong operational culture and
225 history of strong performance like Nicor Gas, the details of operational integration are not
226 developed at the due diligence stage. AGL Resources has made clear that it is committed
227 to maintaining—and, indeed, improving over time through the sharing of best practices—
228 Nicor Gas' already impressive performance. It does not require that a completely
229 redesigned organizational structure be provided more than six months before the
230 transaction closes to determine that the Reorganization will not diminish Nicor Gas'
231 ability to provide adequate, reliable, efficient, safe and least-cost public utility service.

232 **Q. Given the information provided in direct testimony, through discovery, and now in**
233 **rebuttal testimony, do you believe that the Joint Applicants have demonstrated that**
234 **they have met the requirements of Section 7-204(b)(1)?**

235 A. Absolutely. Providing adequate, reliable, efficient, safe and least-cost public utility
236 service is at the core of what AGL Resources and Nicor Gas do every day. The proposed
237 transaction will enable both organizations to do that better and certainly will not diminish

238 our ability to provide that service. Despite Mr. Maple’s objection to the adequacy of
239 information provided (Maple Dir., Staff Ex. 11.0R, 14:259-64), I would observe that he
240 has not identified one example that would suggest that any diminution in service will
241 occur. Indeed, the evidence supports a contrary conclusion. Therefore, I recommend the
242 Commission find the requirements under Section 7-204(b)(1) have been met.

243 **Q. Do any Staff witnesses raise issues as to whether the proposed transaction meets the**
244 **requirements of Section 7-204(b)(2) or (3) of the Act?**

245 A. Yes. Both Staff witness Hathhorn and Staff witness Rearden address those requirements.
246 (Hathhorn Dir., Staff Ex. 8.0, 20:509-21:549; Rearden Dir., Staff Ex. 10.0, 8:172-
247 13:277). Generally speaking, those witnesses identified conditions (restrictions,
248 modification and reporting requirements) that in their view would allow the Joint
249 Applicants to meet those requirements. Joint Applicants’ witnesses Reese and O’Connor
250 address this Staff testimony in detail and accept a number of those conditions. I do,
251 however, believe that it is necessary to provide a brief response to Dr. Rearden’s
252 concerns, proposed limitations, and general characterization of Sequent Energy
253 Management (“Sequent”) and the practice of asset management.

254 **Q. How do you respond to Dr. Rearden’s general statements regarding asset**
255 **management arrangements? (Rearden Dir., Staff Ex. 10.0, 11:229-13:267).**

256 A. First, I emphasize that the Joint Applicants are not seeking Commission approval of any
257 asset management agreement (“AMA”) between Nicor Gas and any third-party, including
258 Sequent, as part of this proceeding. In fact, the Joint Applicants’ response to Staff Data
259 Request DLH 4.01 expressly assured the Commission that asset management is not a
260 service contemplated under either the proposed Operating Agreement or the proposed

261 Services Agreement, and that the Joint Applicants would seek separate Commission
262 approval if and when Nicor Gas proposed to implement an asset management
263 arrangement. (Joint Applicants Exhibit 8.2). Asset management is simply not a feature
264 of the Reorganization and should not be an issue in this case.

265 Given that, I will not respond to each recommendation or characterization made
266 by Dr. Rearden. However, one example of a mischaracterization is his reliance on a
267 recent management audit report from New Jersey concerning asset management. His
268 testimony omits the part of the report that noted sampling of the practice of right of last
269 refusal in the audit. That report goes on to state that purchases made pursuant to those
270 terms “were about the same as those from the non-affiliated suppliers on days when
271 others provided supply to the same places on the same day.” (Rearden Dir., Staff
272 Ex. 10.0, 8:151-62, Att. A at NRE 003372). It is also important to note that the New
273 Jersey Board of Public Utilities considered all facts and just recently approved (after the
274 audit report was issued) an extension of the subject agreement **without a bid and**
275 **containing the right of last refusal** language to which Dr. Rearden takes such exception.
276 (*Id.* at 8:166-71). As it relates to Dr. Rearden’s recommendations to limit the options that
277 Nicor Gas could bring forth in a potential future proceeding (*id.* at 13:271-77), I believe
278 Nicor Gas should have the right to make any proposal to the Commission that brings
279 value back to its customers and not have artificial limitations placed on it here where this
280 issue has neither been requested nor fully examined in this proceeding. Therefore, I
281 request the Commission reject the recommendations of Dr. Rearden related to the
282 imposition of preconditions to a possible future filing.

283 **Q. Dr. Rearden also recommends that the Commission not approve Sequent as a party**
284 **to the Operating Agreement. (Rearden Dir., Staff Ex. 10.0, 9:173-80). Would you**
285 **comment on his recommendation?**

286 A. As noted in our direct testimony, it was proposed that Sequent be included as a party to
287 the Operating Agreement (“OA”), so that Sequent could operate the Chicago Hub as
288 Nicor Enerchange does today under the OA, assuming that Nicor Enerchange ceased
289 operations as a separate entity. Once again, Dr. Rearden references AMAs in his stated
290 objection to Sequent being a party to the OA despite the Joint Applicants’ unequivocal
291 commitment that AMAs are not an authorized service under the OA. (Rearden Dir., Staff
292 Ex. 10.0, 9:173-94). However, Joint Applicants have reviewed the possibility of
293 operating the hub without Sequent serving as the administrator and can do so to avoid
294 any issue that Dr. Rearden perceives with Sequent being a party to that agreement. Thus,
295 although it is not necessary to address any valid concern about AMAs, the Joint
296 Applicants are amenable to withdrawing their request to include Sequent as a party to the
297 OA at this time.

298 **Q. Section 7-204(b)(4) requires that the Commission find that the proposed**
299 **Reorganization will not significantly impair the utility’s ability to raise necessary**
300 **capital on reasonable terms or to maintain a reasonable capital structure. Has any**
301 **witness addressed this requirement?**

302 A. Yes. Ms. Phipps recommends a reporting requirement as a condition to satisfy the
303 requirements under Section 7-204(b)(4). (Phipps Dir., Staff Ex. 9.0, 14:287-92).
304 Mr. Cave will address the specifics, but generally the Joint Applicants accept her
305 reporting requirement.

306 **Q. Did any witness address the requirements under Section 7-204(b)(5) that the utility**
307 **remain subject to applicable laws, regulations, rules, decisions and policies**
308 **governing the regulation of Illinois public utilities?**

309 A. Yes. Staff witness Stoller recommends the Commission find this condition met subject to
310 the condition set forth by Staff witness Burk: specifically, that the utility maintain the
311 specific compliance positions defined in his testimony for a ten year period following the
312 close of the Reorganization. (Stoller Dir., Staff Ex. 6.0, 8:157-9:172).

313 **Q. Would you address Mr. Burk's concern regarding the commitment to ensure**
314 **compliance with pipeline safety laws? (Burk Dir., Staff Ex. 12.0, 2:41-3:53).**

315 A. The Joint Applicants share Mr. Burk's goal of assuring that Nicor Gas remains in
316 compliance with all applicable pipeline safety laws. AGL Resources operates natural gas
317 distribution utilities in six states today. As described in the testimony of Joint
318 Applicants' witness Lonn, both AGL Resources and Nicor Gas operate safe operating
319 companies today and we have committed to ensuring that is the case going forward.
320 While Mr. Lonn will address the comparable metrics from the resource aspect and
321 relevant metrics, I can assure you that operating a safe and reliable system is not a choice
322 for AGL Resources; it is the primary goal for each of our operating companies.

323 While we share Mr. Burk's goal of ensuring that Nicor Gas retains its safety and
324 compliance culture subsequent to completion of the Reorganization, his recommended
325 conditions go beyond what is necessary to address his issue. For example, his
326 recommendation to require specific positions to exist for ten years subsequent to the close
327 of the Reorganization attempts to micromanage the operations of the utility. (Burk Dir.,

328 Staff Ex. 12.0, 20:450-23:532). His recommendation also is not necessary to ensure that
329 Nicor Gas remains a safe operator following the Reorganization.

330 **Q. What was Mr. Burk’s stated reason for his proposed requirement?**

331 A. Mr. Burk examined and compared one metric—the number of Notices of Proposed
332 Violations (“NOPVs”) issued to Nicor Gas and the AGL Resources operating
333 companies—to assert that his proposal is required to ensure Nicor Gas’ code and safety
334 compliance. (Burk Dir., Staff Ex. 12.0, 4:88-5:94, 6:125-7:156). A broader examination
335 of relevant safety metrics and historical performance, however, clearly demonstrates the
336 commitment that both organizations have to safety. As discussed in the rebuttal
337 testimony of Mr. Lonn, there are several reasons, completely unrelated to underlying
338 safety or commitment to operating excellence, why the number NOPVs vary quite
339 markedly by state and by operator. We see such variations in our differing jurisdictions
340 today. However, operating a safe and reliable system is not just about NOPVs, nor is it
341 focusing on one particular safety metric. As Mr. Lonn will explain, a number of various
342 metrics provide a more complete picture of how safe an operator AGL Resources is
343 compared with Nicor Gas. The evidence demonstrates that AGL Resources is equally
344 committed to operating safe distribution systems, and this commitment will continue at
345 Nicor Gas subsequent to the closing of the proposed Reorganization.

346 **Q. Do you agree with Mr. Burk’s recommendation that Nicor Gas is to maintain a list
347 of specific positions for ten years? (Burk Dir., Staff Ex. 12.0, 20:450-23:532).**

348 A. No. But my disagreement should not be viewed as taking a step back from our
349 commitment to provide safe and reliable service. To the contrary, I am concerned that
350 the rigidity of Mr. Burk’s recommendation is, if anything, potentially counter-productive.

351 We agree that the positions identified by Mr. Burk are critical to the operations of Nicor
352 Gas today. Looking at similar job functions in AGL Resources, AGL Resources actually
353 has more resources dedicated to these functions than Nicor Gas, which makes sense given
354 the number of jurisdictions in which AGL Resources operates. The biggest issues are
355 identifying specific job titles that must be maintained and knowing what the future safety
356 requirements will be.

357 As to specific job titles, Mr. Burk would have the Commission require Nicor Gas
358 to maintain exact positions and titles for ten years following the Reorganization. (Burk
359 Dir., Staff Ex. 12.0, 20:450-23:532). Such a recommendation not only is unnecessary, it
360 delves into a level of micromanagement that should be best left to management, not a
361 regulator. For example, what happens if technology allows us to automate the job
362 requirements of a position like a general office clerk and that job could be high graded to
363 add a Corrosion Technician? Mr. Burk's recommendation would prohibit that
364 opportunity to enhance safety and saddle ratepayers with funding a position that is no
365 longer needed.

366 Second and similarly, safety regulations could change in such a way that would
367 necessitate a complete revamp of compliance for utilities. Mandating these jobs on a
368 position by position basis for a decade would prevent Nicor Gas from building an
369 organization to meet those changing needs.

370 In sum, I believe that Mr. Burk's staffing proposal goes far beyond what is
371 necessary or appropriate. We do agree that the Commission has a right and responsibility
372 to monitor Nicor Gas' safety and compliance and we are committed to working
373 cooperatively on this important function as we do in all of our jurisdictions. Upon the

374 request of Staff, we would agree to provide an explanation of staffing changes in this area
375 as we review and evolve to meet safety requirements. But the responsibility of designing
376 positions and staffing to meet federal and state regulatory requirements is the sole
377 responsibility of management.

378 **Q. How do the Joint Applicants seek to address Mr. Burk's concerns?**

379 A. The Joint Applicants could agree with a number of Mr. Burk's recommendations subject
380 to certain modifications. Specifically, the Joint Applicants would agree to maintain at
381 least the current total *number* of compliance positions as identified in the testimony of
382 Mr. Lonn located in and operating in Illinois to support the areas Mr. Burk identified for
383 the three-year period following the Reorganization. This commitment will ensure an
384 equivalent complement of staffing in total in the areas of corrosion control, technical
385 compliance, locating services, "Watch and Protect," transmission integrity management,
386 and distribution integrity management while allowing management the flexibility to run
387 an efficient utility. Further, upon the request of Staff, the Joint Applicants would commit
388 to inform the Commission's Energy Division of changes to the staffing levels in any of
389 the areas identified above, or tasks related to code compliance activity, implementation or
390 compliance monitoring referenced by Mr. Burk during that three-year period. Given the
391 similar commitment to safety detailed in the testimony of Mr. Lonn and the commitments
392 made herein, the Commission should find that the requirements of Section 7-204(b)(5)
393 have been met.

394 **Q. Would you provide a summary of the Joint Applicants response to the issues raised**
395 **under Section 7-204(b)(6)?**

396 A. Yes. In sum, Staff witness Rearden appears satisfied that the Reorganization will have
397 no adverse impact on competition, subject to a review of information that was provided
398 to Dr. Rearden subsequent to his filing direct testimony. (Rearden Dir., Staff Ex. 10.0,
399 13:279-81). Joint Applicants' witness O'Connor explains how that information should
400 resolve Dr. Rearden's questions.

401 The Joint Applicants also note that RESA/IGS recently withdrew their testimony
402 related to the proposed Reorganization. As such, no competitive provider is raising
403 claims about compliance with Section 7-204 (b)(6). Accordingly, there are no issues
404 preventing the Commission from finding that the conditions under Section 7-204(b)(6)
405 have been met. Mr. O'Connor addresses this issue in more detail in his rebuttal
406 testimony. For the reasons set forth in the Joint Applicants' direct and rebuttal testimony,
407 I recommend the Commission find that the conditions of Section 7-204(b)(6) have been
408 satisfied.

409 **Q. Would you respond to the concerns raised by Staff related to the requirements**
410 **under Section 7-204(b)(7) that the Reorganization is not likely to result in any**
411 **adverse rate impacts?**

412 A. Joint Applicants' witness Cave will go into more detail regarding the specific analysis.
413 Mr. Cave will address why the concerns raised by Staff witness Phipps regarding the
414 potential impact on rates from any change in financing cost for Nicor Gas should not be
415 addressed as a single item, and that the total impact on rates from the long-term benefits
416 of the Reorganization are likely to more than offset any slight increase in financing costs.
417 In sum, the Joint Applicants are proposing to continue the current rate structure under
418 which Nicor Gas operates today. Therefore, there is no impact on rates from the

419 Reorganization. Accordingly, the Joint Applicants recommend the Commission find that
420 the proposed Reorganization meets the requirements of Section 7-204(b)(7).

421 **Q. Section 7-204(c)(i) and (ii) address questions concerning the cost of the**
422 **Reorganization and any savings resulting from the Reorganization. Would you**
423 **address Staff witness Bridal's recommendations made regarding these provisions?**
424 **(Bridal Dir., Staff Ex. 7.0, 4:80-88).**

425 A. Staff witness Bridal recommends that all the cost associated with the Reorganization
426 should not be recoverable in this or any future rate proceeding. (*Id.* at 4:86-88). He also
427 recommends that any savings attributable to the test period realized from the
428 Reorganization effectively serve as a reduction to cost of service in that future test period
429 and that those savings would appear as a reduction to test year cost of service in setting
430 rates. (*Id.* at 3:47-53).

431 Incurring the costs of the Reorganization is a precondition to any ability to
432 achieve any savings in the future. Therefore, the Joint Applicants will accept
433 Mr. Bridal's proposal regarding cost and savings if it is amended to reflect the fact that
434 any savings should be measured net of the costs to achieve them. Accordingly, the Joint
435 Applicants propose that the condition include the following:

436 In the event that any party, other than Nicor Gas, causes or
437 requests a review of Nicor Gas' earnings during the five year period
438 following the completion of the Reorganization, Nicor Gas shall be
439 afforded the opportunity to request the Commission consider inclusion of
440 a test year amortization (1/5 of the total cost of the Reorganization as
441 stated in response to Staff Data Request RWB 1.03 (Mr. Effron refers to

442 these costs as “merger costs”)) in determining revenue requirement in that
443 proceeding.

444 This language would not commit the Commission to allowing recovery, but would
445 provide Nicor Gas with the opportunity to argue for recoverability of the costs to achieve
446 savings realized in the context of that case. Assuming no case arises during that five year
447 period, Mr. Bridal’s recommendation would be the result.

448 **Q. Is there any validity to AG/CUB witness Effron’s claims of cost savings and his**
449 **resulting recommendations under Section 7-204(c)(i) and (ii)? (Effron Dir.,**
450 **AG/CUB Ex. 3.0, 4:15-11:7).**

451 A. No. His claims are erroneous, and without foundation, and they should be rejected.
452 Mr. Effron attempts to create savings out of whole cloth by extrapolating savings
453 attributed to an entirely different reorganization—the 2006 petition for reorganization of
454 The Peoples Gas Light & Coke Company (“Peoples Gas”)—to this Reorganization. (*Id.*
455 at 5:1-6:12). He goes on to recommend that those manufactured “savings” be
456 immediately flowed through to customers along with the alleged “excess” earnings,
457 discussed elsewhere. (*Id.* at 6:14-17, 8:14-9:11). Mr. Effron also recommends a portion
458 of the merger costs be amortized into rates over a ten year period. (*Id.* at 10:11-17).

459 As I said, Mr. Effron’s first error is his attempt to create “savings.” Mr.
460 O’Connor explains that this Reorganization is very different from the Peoples Gas
461 transaction, with differing parties, drivers, conditions, and commitments. That fact is that
462 no party in this proceeding has identified any *real* savings directly attributable to this
463 Reorganization. However, if Mr. Effron’s theory of extrapolation had any validity, a
464 party could argue to increase Nicor Gas’ rates by extrapolating the significantly higher

465 rates of Peoples Gas. I trust Mr. Effron would oppose extrapolation as a means to
466 increase Nicor Gas' distribution rates. The Commission should similarly dismiss it as a
467 means to fabricate non-existent savings.

468 Mr. Effron's proposed ten year amortization of a limited portion of the merger
469 costs is equally flawed. While the Joint Applicants appreciate the recognition that costs
470 should be matched against savings, Mr. Effron's limitation on the costs that should be
471 recoverable is inconsistent with his own principle and ensures that there will be no
472 "matching" of costs with savings. (Effron Dir., AG/CUB Ex. 3.0, 10:11-17). The costs
473 that Mr. Effron would seek to eliminate from consideration are costs that are, in fact,
474 required to effectuate the Reorganization and, therefore, must be considered in the
475 context of any savings that would be achieved.

476 In sum, the Joint Applicants recommend the Commission reject AG/CUB witness
477 Effron's proposal and instead accept Staff witness Bridal's proposal as modified above
478 and find that the conditions under Section 7-204(c)(i) and (ii) have been met.

479 **Q. Did Staff claim that the Reorganization is subject to any other statutory**
480 **requirement?**

481 A. Yes. Staff witness Phipps presented testimony concerning the applicability of Section 6-
482 103 of the Act, and addressing Nicor Gas' post-merger capital structure. She
483 recommends a reporting requirement related to that Section. (Phipps Dir., Staff Ex. 9.0,
484 19:384-94). While it is the Joint Applicants' position that the proposed Reorganization is
485 not subject to the provisions of Section 6-103, the Joint Applicants do not object to Ms.
486 Phipps proposed reporting requirement. Mr. Cave provides additional detail on this point
487 in his rebuttal testimony.

488 V. CONCLUSION

489 Q. Does that complete your rebuttal testimony?

490 A. Yes.